

# **EXHIBIT C**

**REDACTED VERSION OF  
DOCUMENT SOUGHT TO  
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1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA  
3 SAN FRANCISCO DIVISION  
4 ORACLE AMERICA, INC.,  
5 Plaintiff,  
6 vs. Case No. 3:10-cv-03561-WHA  
7 GOOGLE, INC.,  
8 Defendant.

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13 \*HIGHLY CONFIDENTIAL\*

14 PURSUANT TO THE PROTECTIVE ORDER  
15 VIDEO DEPOSITION OF JAMES R. KEARL, Ph.D.  
16 San Francisco, California  
17 Wednesday, March 23, 2016  
18 Volume I  
19  
20  
21

22 REPORTED BY:

23 REBECCA L. ROMANO, RPR, CSR No. 12546  
24

25 Job No. CS2276036

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1 categories of programmers face.

2 Q. Is it fair to say that you're spending  
3 more time than you want to at lawyers' services?

4 A. Absolutely.

5 MR. COOPER: Yes.

6 Q. (By Mr. Ragland) Well, I should have  
7 asked a foundational question.

8 What -- what do you mean by multi-homing?

9 A. Multi-homing, I think, means that I write  
10 for several platforms that presumably have  
11 different implementing -- well, different  
12 app-support platforms.

13 That is, you've got -- this is awkwardly  
14 put. You've got to write in different languages.  
15 Okay.

16 Q. In your report, on paragraph 59, which is  
17 on -- you can race to get to the page -- pages 30  
18 and 31, you state in there that, "Google makes less  
19 search-related profit when users switch from an  
20 Android phone to another smartphone."

21 What is -- to your recollection,  
22 what's the -- the evidence or basis for that -- for  
23 that statement?

24 A. This has a long predicate to it, which I  
25 describe in my -- in my -- early on in the report,

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1 which is, you would think that the nature of  
2 traffic acquisition costs would be sort of almost  
3 stipulated, that everybody would agree that the  
4 record would be clear on this matter, that we would  
5 know who pays what and how much.

6 And the record is a hash. It's not  
7 clear. And the experts aren't clear either.  
8 Because I asked them this question when I had an  
9 opportunity to pose questions in depositions.

10 So it -- with that as background, it's my  
11 understanding that when Google sells an ad, its  
12 revenue doesn't depend upon which -- it's -- the  
13 price it gets paid for placing the ad doesn't  
14 depend upon which platform it's on.

15 So its revenue are platform neutral, but  
16 that its costs are not. And that the advantage of  
17 Android is that it reduced traffic acquisition  
18 costs.

19 That's what I believe the facts will be,  
20 but they're not clear. Okay.

21 I think there's some indirect evidence  
22 that that's what Google wanted. It wanted to  
23 reduce traffic acquisition costs.

24 That may have occurred in two ways. Only  
25 one way is handled by all of the experts in this

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1 matter, including me. And that is there was a  
2 direct reduction in costs.

3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]

7 Q. Let me just --

8 A. -- Android.

9 Q. Let me break in for a moment because it  
10 sounds like we're --

11 MS. HURST: Objecting to you --

12 Q. (By Mr. Ragland) -- like we're getting  
13 into information under the protective order for  
14 which Oracle's representative has to be excused.

15 Apologies --

16 A. I apologize.

17 MS. HURST: No, it's not your fault. We  
18 tried to get that altered, but thank you for your  
19 consideration.

20 Q. (By Mr. Ragland) So I'm sorry to  
21 interrupt you for that.

22 Please continue if you want to refer to  
23 the -- to the LiveNote feed.

24 [REDACTED]  
25 [REDACTED]

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[REDACTED]

And it's that quantitative and the overall qualitative thing that informs my decision, and -- and informs my -- my opinion, not decision -- and is what is reflected in this paragraph, and reflected, I think, in the other experts' reports.

There's a second way that Android may have mattered to Google that has not been quantified by anybody, and that is whether it put Google in a stronger position in negotiating what

[REDACTED]

prevent, for example, being blocked out of the platform or -- or something of that sort.

Nobody has taken that on. But, at least, again, there's some qualitative things evidenced, that is stuff that I've seen that suggests that there was some concern about being blocked and

[REDACTED]

[REDACTED]

negotiating TAC up.

But none of that figures into anybody's damages numbers here, none. What figures into the damage numbers is -- is this different than acquisition costs.

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1           So long answer.

2           To repeat the short version of this is,  
3 I'm assuming that the -- that the revenues -- and I  
4 think all the other experts do as well -- will be  
5 more or less the same, but that Android had lower  
6 acquisition -- that Google had lower acquisition  
7 costs because of Android, and, therefore, its  
8 profits were greater.

9           MR. RAGLAND: And I will take this  
10 opportunity to designate this transcript as highly  
11 confidential under the protective order subject to  
12 de-designation.

13           MS. HURST: So I -- I just have to object  
14 to that. The Judge has already said that nothing  
15 outside of the last two years should be  
16 considered -- should be considered under seal at  
17 this point in the case.

18           And while that particular answer I can  
19 understand is consistent with prior court orders,  
20 designating the whole transcript at this point in  
21 the case when we have Daubert motions to file, that  
22 just doesn't meet the Ninth Circuit standard for  
23 compelling reasons.

24           MR. RAGLAND: Well, my --

25           MS. HURST: I object to you doing that.